IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

WP(C).No. 26644 of 2007(V)

PETITIONER:

SAJITHLAL P., AGED 40 YEARS,
S/O.BHARATHAN, LAL NIVAS,
P.O.KOTTOOLI, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. CORPORATION OF CALICUT, KOZHIKODE.

3. SECRETARY, CORPORATION OF CALICUT, KOZHIKODE.

4. TOWN PLANNING OFFICER, REGIONAL TOWN PLANNING OFFICE, KOZHIKODE.

R2 TO R4 BY ADV. SRI.P.V.KUNHIKRISHNAN, SC, KOZHIKODE CORPN.
R1 SR.BY GOVT.PLEADER SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.26644/07

APPENDIX

PETITIONER'S EXTS:

EXT.P1 - TRUE COPY OF THE PLAN OF PROPOSED HOUSE OF THE PETR.

EXT.P2 – TRUE COPY OF LETTER DT.26.11.05 SENT BY R1 TO PETR.

EXT.P3 – TRUE COPY OF THE REPRESENTATION DT.17.1.06 MADE BY PETR. BEFORE THE MINISTER FOR LOCAL SELF GOVT. DEPT.

EXT.P4 – TRUE COPY OF REPRESENTATION DT.17.11.06 MADE BY PETR. TO DO.

EXT.P5 – TRUE COPY OF LETTER DT.26.4.04 SENT FROM R1 TO PETR.

EXT.P6 – TRUE COPY OF THE LETTER DT.7.5.07 ISSUED FROM R4 TO PETR.

EXT.P7 – TRUE COPY OF BUILDING PERMIT DT.8.10.02 ISSUED TO ONE P.M.JOHNSON BY R3.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.26644 OF 2007

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DATED THIS THE 6TH NOVEMBER, 2007

J U D G M E N T

The grievance of the petitioner who applied to the Corporation of Calicut for construction of a residential building on the house plot belonging to him is that the application was returned to him by the Corporation on the reason that the plot falls within the Sarovaram Project covered by a DTP Scheme and that he will have to obtain exemption from the Government. When the Government was approached, the Government under Exts.P2 and P5 declined the petitioner's request on the ground that the area falls within the Dream City Project. Being aggrieved, the petitioner has filed this Writ Petition seeking the following reliefs:-

> "i) to issue a writ of certiorari or any other appropriate writ, order or direction quashing Exts.P2 and P5;
>
> ii) to declare that Exts.P2 and P5 are illegal, arbitrary, unconstitutional and opposed to the principles of natural justice;
>
> iii) to direct the respondents to issue building permit to the petitioner as applied for by him as per application No.E8/13565/2004 forthwith.

2. On behalf of respondents 2 and 3, as directed by this Court, a detailed statement has been filed. Paragraph No.6 is the relevant

paragraph and the contention prominently taken is that a DTP Scheme has been approved for the Calicut Corporation area by the Government as per Notification No.GO(MS)81/94 dated 15.4.1994 and that the said scheme is even now valid. The Tourism Department has renamed the project as "Sarovaram Project" and the Department is all set to implement the same. As regards the building permit issued to one Johnson in the area falling within the very same Scheme, it is stated that steps are under way for revoking the permit.

3. Heard Sri.A.V.M.Salahuddeen, counsel for the petitioner and Sri.P.V.Kunhikrishnan, Standing Counsel for the Corporation.

4. Sri.Salahuddeen would submit that the DTP Scheme has not been implemented for the past 13 years. He further submitted that the Scheme has become oppressive from the petitioner's perspective. The petitioner who is the owner of a small plot is unable to build his residential building. He is ready and willing to demolish the building without demanding any compensation, in the event of any acquisition proceedings being initiated within a period of one year of getting permit. My attention was drawn by Sri.Salahuddeen to the judgment of the Full Bench of this Court in **Francis v. Chalakudy Municipality** (1999 (3) KLT 560) and to the judgment of the Division Bench in

Padmini v. State of Kerala (1999 (3) KLT 465). He also drew my attention to the judgment of the Supreme Court in **Raju S.Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222).

5. Having considered the principles emerging from the decisions cited above, I am of the view that the respondents are not justified in insisting that the petitioner should keep his only item of property idle on the reason that the area is ear-marked for the establishment of Sarovaram Project under the DTP Scheme or for the Dream City Project. It will be noticed that the petitioner has a case that his plot does not fall within that area. Whatever that be, considering the principles emerging from the decisions cited at the Bar, the Writ Petition will stand disposed of issuing the following directions:-

The Corporation is directed to entertain the application for building permit submitted by the petitioner, uninfluenced by the proposal to implement the Sarovaram Project or the Dream City Project. In other words, if the plan is otherwise in order, the same shall be approved and the existence of the Sarovaram Project or Dream City Project shall not be a ground for rejection of the application for permit. The above direction however will be conditional on the petitioner submitting an affidavit undertaking to demolish the

building to be constructed by him pursuant to the permit to be issued, without demanding any compensation for the building under the Land Acquisition Act, if a notification under Section 4(1) in that regard is promulgated within a period of one year of the petitioner receiving the permit. Orders shall be passed on the permit application within one month of the petitioner filing the affidavit and submitting the plan and the application along with copy of this judgment. It is made clear that even thereafter nothing will stand in the way of the Corporation or the Government acquiring the petitioner's property including the building for any genuine public purpose. But under such an eventuality, the petitioner will be entitled for adequate compensation under the Land Acquisition Act.

(PIUS C.KURIAKOSE, JUDGE)

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